



REQUEST FOR INFORMATION (RFI)

CITY OF SAN JOSE WIRELESS REINFORCEMENT UPGRADE

Issue Date: September 21, 2009

Notice of Interested Wireless Service Providers Meeting/Conference Call

October 1, 2009, 1:00 p.m. – 4:00 p.m.

San Jose City Hall

200 E. Santa Clara Street, 6th Floor, Room T-639

San Jose, 95113

1 **BACKGROUND**

- 1.1 Cell phone and radio reception is inconsistent in certain parts of the City of San Jose's City Hall.
- 1.2 San José City Hall consists of 3 building structures: the City Hall Tower, consisting of a 400,765 Square Foot 18-Story above-ground structure and a 193,542 Square Foot lower level garage and lower level basement, the 106,185 Square Foot 3-Story West Wing and the 10,665 Square Foot 3-Story Rotunda. The three building structures are all connected; the tower and the Wing are joined by a Rotunda and a walkway bridge.
- 1.3 RTKL Associates Inc. has designed a Multi-Carrier Repeater system to serve all three building structures. The repeater system is capable of distributing all service providers' signals on a single Distributed Antenna System (DAS) with the proper filtering and without interfering with any of the carriers. San José is interested in having service providers in the area connect to this system which will provide improved coverage inside the buildings via the proposed DAS.
- 1.4 The City's General Services Department desires assurance that Service Providers (SP) will utilize the cellular reinforcement portion of the project prior to the City's providing the necessary infrastructure and appurtenances required for improved wireless coverage within the City Hall facility.
- 1.5 SP's will be required to provide a signal to the DAS within City Hall.

Prerequisite for installing and maintaining telecommunication facilities on a public facility is that the SP's must enter into an agreement with the City to define rights, roles, and responsibilities of all parties. An exemplar agreement, entitled:

NON-EXCLUSIVE INSTALLATION AND PROPERTY USE AGREEMENT
BETWEEN THE CITY OF SAN JOSÉ AND COMPANY FOR ENHANCED
WIRELESS SERVICE AT CITY HALL,

is included as Attachment A to this Request for Information (RFI).

The construction documents can be accessed at RTKL ftp site by the following:

Open WINDOWS Explorer and copy the following link to the address bar. When prompted enter the username and password.

<ftp://BIGJose:IBWD08@ftp.rtkl.com>

Username: BIGJose Password: IBWD08

Internet Explorer can also be utilized; however, it is necessary to click on page and select view in windows explorer.

Please contact Richard Lowes, RTKL, at (410) 537-6182 office, or (443) 791-7936 cell, with any technical problems accessing the ftp site.

- 1.6 The objective of this RFI is to obtain SP commitment, as expressed by providing a Letter of Intent to provide wireless services, to utilize the City's proposed DAS. This will require SP to provide a signal to the DAS.**

2 SCOPE OF SERVICES

2.1 Network Connection

The SP shall design and install a connection from a point in their network to the City Hall Tower. The connection shall terminate in the Main Telecommunications Room (MTR) where the head-end equipment for the DAS resides. The connection shall be capable of supporting all subscribers that may reside in the three building structures. In order for the SP to perform channel planning to match the capacity of the system with the subscriber base, more information regarding the facility will be needed by the City. For this reason, the response to this RFI shall include the following:

2.2 Letter of Intent

The SP shall submit a letter of intent to gain access to the repeater system at the San José City Hall. The letter of intent shall outline the SP's interest in connecting to the Repeater System and shall acknowledge the possibility of all other service providers connecting to the common repeater system. The letter shall also outline the connection methods (i.e. BTS or BDA, etc.) that may be used to connect the San José City Hall to the SP's net. A brief description of the design and installation methods shall also be included. Nothing in the letter of intent will create any binding obligations for the SP or City.

2.3 Request for Information

The SP shall submit a request for all additional information that is needed from the City of San José. The information requests shall serve the purpose of aiding the SP in the following:

2.3.1.1 Choosing the type of connection that is needed to enter the facility (i.e. using a Base Transceiver Station (BTS) or a Bi-Directional Amplifier (BDA)).

2.3.1.2 Sizing of the BTS to support the number of users being served.

2.3.1.3 Aid in the network and channel planning aspect of deploying a BTS or using a BDA.

2.3.1.4 Performing a Return on Investment (ROI) of deploying a BTS and/or BDA and the possible subsidies (if any) that the service provider can offer.

2.4 Meeting Planning and Coordination

The SP shall acknowledge the key personnel that will be available to meet in San José at no incurred cost to the City of San José for purposes of this solicitation. Coordination of meeting times and location will be performed after the responses to this RFI are received

and reviewed by the City of San José and RTKL. Site surveys and review of documentation will also be included in these meetings following receipt of these responses.

2.5 Costs

The SP shall submit an Opinion of Probable Cost (OPC) for the connection being requested. All costs that are associated with making this connection should be listed along with a responsibility matrix. The responsibility of the costs will be discussed at a later date. The SP will not be held accountable to the costs listed in the OPC at this initial phase of the project.

2.6 An integral part of this RFI will be your participating in a discussion to occur at the following time this SP Conference Call:

October 1, 2009, 1:00 p.m. – 4:00 p.m.

San Jose City Hall
200 E. Santa Clara Street, 6th Floor, Room T-639
San Jose, 95113

2.7 Contact Information

Please submit questions and responses via fax, email, regular mail, or courier to:

Jim Wilson, P.E.
City of San José
200 East Santa Clara St., 6th Floor
San Jose, CA 95113

Telephone: 408-535-8441 Fax 408-292-6288
Email: jim.wilson@sanjoseca.gov

2.8 **RFI PROCESS AND TIMELINE**

2.9 Once this RFI is released, the process is as follows:

RFI Released	9/21/09
Due Date for Submitting Written Questions prior to Teleconference meeting.	9/30/09
Hold SP conference call for interested parties. Meeting is from 1:00 p.m. to 2:00 p.m. at the San Jose City Hall, 200 E. Santa Clara Street, 6th Floor, Room T-639 San Jose, CA City will address responses to SP Questions at the conference call and after the meeting in form of an addendum.	10/01/09

Due Date for Submitting Written Questions after the conference call.	10/06/09
City Responds to outstanding SP Questions.	10/09/09
Letters of Intent due at 4:00 pm, PST	10/16/09

3 PROCEDURE FOR SUBMITTING QUESTIONS & INQUIRIES

- 3.1 Questions pertaining to this RFI must be submitted in writing to the contact person listed under Section 2, "Contact Information". Please submit all questions by the deadline. The CITY will provide a written response to all pertinent questions in the form of an Addendum.

4 RFI RESPONSE INFORMATION

4.1 GENERAL

4.1.1 The City is not limiting or restricting responses. However, a concise summary response is preferred over volumes of marketing literature.

4.2 SPECIFIC

4.2.1 Please include the following in your response to this RFI:

4.2.1.1 Background information on your company.

4.2.1.2 Please provide information on the following issues:

- Assessment/detail on other legal, regulatory, financing, and utility issues that would need to be addressed and how your company could address those issues.

5 GENERAL INFORMATION

- 5.1 This RFI process will not result in the recommendation of or selection of any supplier, or the issuance of a purchase order or agreement of any type.
- 5.2 The City intends to make all information received public. As such, confidential or proprietary information should not be included in your response.
- 5.3 Responders are responsible for any and all expenses that may be associated with responding to this RFI.

ATTACHMENT A

NON-EXCLUSIVE INSTALLATION AND PROPERTY USE AGREEMENT BETWEEN THE CITY OF SAN JOSÉ AND COMPANY FOR ENHANCED WIRELESS SERVICE AT CITY HALL

This NON-EXCLUSIVE INSTALLATION AND PROPERTY USE AGREEMENT ("AGREEMENT") is made and entered into by and between the CITY OF SAN JOSÉ, a municipal corporation ("CITY"), and _____, a _____ ("COMPANY"), upon execution by CITY (which date of execution shall be the "EFFECTIVE DATE").

R E C I T A L S

- A. **WHEREAS**, CITY is the owner of that certain real property located at the San José City Hall, 200 E. Santa Clara Street, San José, California ("City Hall") and more particularly described on the "PROPERTY Description," attached hereto as **EXHIBIT "A"** ("PROPERTY"); and
- B. **WHEREAS**, COMPANY desires to provide and install on the PROPERTY, at no cost to CITY, certain telecommunications facilities and appurtenant structures, which telecommunications facilities are more particularly described on the "Telecommunications Facility Description" attached hereto as **EXHIBIT "B"** ("TELECOMMUNICATIONS FACILITIES") in order to provide additional/enhanced cellular phone coverage throughout the PROPERTY ("SERVICES"); and,
- C. **WHEREAS**, in order to install such TELECOMMUNICATIONS FACILITIES, COMPANY desires to obtain from CITY, and CITY desires to grant to COMPANY, the right to use certain portions of the PROPERTY, which portions are further described in **EXHIBIT "C"** (the "LICENSED AREAS") for the purposes of installing, maintaining, and operating TELECOMMUNICATIONS FACILITIES to provide SERVICES, all in accordance with the terms and conditions contained in this AGREEMENT; and
- D. **WHEREAS**, CITY desires to have the SERVICES available for persons to access and use in City Hall in accordance with the terms and conditions contained in this AGREEMENT.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. RIGHT TO USE CITY PROPERTY

A. Right to Use.

CITY hereby grants COMPANY the right to use the LICENSED AREAS of the PROPERTY more particularly described and shown on **Exhibit "C"** above, which is attached hereto and incorporated by reference herein. Said use shall be on a non-exclusive basis, for the purpose of installing, maintaining and operating the TELECOMMUNICATIONS FACILITIES to provide SERVICES and for no other purpose.

B. Access.

1. COMPANY will be given reasonable access to the LICENSED AREAS between the hours of 6:00 p.m. to 6:00 a.m. to repair, maintain or remove the TELECOMMUNICATIONS FACILITIES, provided COMPANY provides CITY with at least five (5) days prior written notice of the times that COMPANY will need access to the LICENSED AREAS or any other portion of the PROPERTY. The CITY's Director of General Services or the Director's designee (hereinafter collectively "DIRECTOR") shall be CITY's contact for these purposes, unless CITY otherwise indicates in writing.
2. If emergency repair of the TELECOMMUNICATIONS FACILITIES is necessary, COMPANY may be allowed reasonable access to the LICENSED AREAS between 6:00 a.m. and 6:00 p.m., provided that COMPANY obtains the DIRECTOR's prior permission to enter the LICENSED AREAS. The CITY shall provide COMPANY with the phone number of the DIRECTOR, which number shall permit contact with the DIRECTOR, or the Director's designate, 24 hours per day.
3. COMPANY shall allow a representative of the CITY to accompany COMPANY employees, contractors, sub-contractors, vendors, and any other person who is required to perform work that allows them to have access to City Hall or for any other work that might take place in the LICENSED AREAS or any other portion of the PROPERTY.

C. Relocation and Removal.

1. At any time during the term of this AGREEMENT, CITY may require relocation of the TELECOMMUNICATIONS FACILITIES or any part thereof. COMPANY shall, at COMPANY's sole cost and expense, relocate all or part of its TELECOMMUNICATIONS FACILITIES, to a location designated by CITY in an expeditious manner only as may be permitted, directed, or required by the

DIRECTOR within one hundred twenty (120) day's of receiving from CITY prior written notice that the TELECOMMUNICATIONS FACILITIES must be relocated.

2. If, notwithstanding COMPANY's agreement to relocate the TELECOMMUNICATIONS FACILITIES, COMPANY fails to relocate the TELECOMMUNICATIONS FACILITIES or repair or restore the affected areas of the LICENSED AREAS and PROPERTY within the one hundred and twenty (120) day period, as that period may be extended as provided in this SECTION, CITY MANAGER, in his or her sole discretion and without limitation with respect to any other rights or remedies which he/she may have, may terminate this AGREEMENT, effective no earlier than seven (7) days after the date of notice of termination, and CITY may thereafter remove any of COMPANY's PROPERTY, including the TELECOMMUNICATIONS FACILITIES from the PROPERTY.
3. If CITY removes the TELECOMMUNICATIONS FACILITIES pursuant to this Section, COMPANY shall pay to CITY all costs associated with CITY's removal of the TELECOMMUNICATIONS FACILITIES, including any storage costs and costs to repair and restore the PROPERTY, including the LICENSED AREAS, within ten (10) days after receipt by COMPANY of an itemized bill therefor.

D. Title to the TELECOMMUNICATIONS FACILITIES.

Title to the TELECOMMUNICATIONS FACILITIES shall be and remain with COMPANY while the TELECOMMUNICATIONS FACILITIES are installed and maintained at the PROPERTY in accordance and compliance with all of the terms of this AGREEMENT.

E. Title to improvements to the PROPERTY.

Notwithstanding Section 1.D above, title to the improvements to the PROPERTY, or LICENSED AREAS required for approval for the placement of the TELECOMMUNICATIONS FACILITIES, including buildings or other structures placed thereon, shall be and remain with CITY. Title to all equipment installed for purposes of operating and providing wireless communications services pursuant to this AGREEMENT shall be and remain with COMPANY.

F. No Warranties of Suitability of PROPERTY.

It is COMPANY's election to install and maintain the TELECOMMUNICATIONS FACILITIES at the LICENSED AREAS and COMPANY does so solely at its own risk. CITY makes no representations or warranties regarding the suitability, condition or fitness

of the PROPERTY in general or the LICENSED AREAS in particular for the installation, maintenance or use of the TELECOMMUNICATIONS FACILITIES.

G. Right of CITY Access.

CITY reserves, and COMPANY agrees to, the right of CITY, its authorized officers, employees, agents or contractors, to enter into and access the LICENSED AREAS at any time. Without limiting the foregoing, CITY and COMPANY agree that CITY may: (1) inspect the LICENSED AREAS and TELECOMMUNICATIONS FACILITIES for COMPANY'S compliance with the terms of this AGREEMENT; (2) make repairs, alterations or additions to the LICENSED AREAS or maintain or use the PROPERTY or LICENSED AREAS in any manner not prohibited by the terms of this AGREEMENT, all without a claim by COMPANY for any loss of occupation or use of, or any abatement of, the USE CHARGE for use of the LICENSED AREAS.

SECTION 2. TERM

A. Initial Term.

The term of this AGREEMENT shall commence on the EFFECTIVE DATE set forth herein, and shall continue for five (5) years, expiring at 11:59 p.m. on the fifth anniversary of said EFFECTIVE DATE ("EXPIRATION DATE"), unless earlier terminated as pursuant to the terms of this AGREEMENT.

B. Option to Extend.

COMPANY shall have the option to extend the term of this AGREEMENT beyond the initial term described herein for one additional five (5) year period on the same terms and conditions that are contained in this AGREEMENT. COMPANY shall exercise its option to extend this AGREEMENT, if at all, by giving written notice to CITY of its election to exercise this option no later than one hundred and eighty (180) days prior to the EXPIRATION DATE.

SECTION 3. USE CHARGE

A. Charge and Payment.

COMPANY shall pay NO USE CHARGES to CITY for use of the LICENSED AREAS at any time during the initial or extended term of this AGREEMENT.

SECTION 4. RIGHT TO USE APPLICABLE ONLY TO LICENSED AREAS.

This AGREEMENT shall not be construed to permit construction, installation, maintenance or use of TELECOMMUNICATIONS FACILITIES on any property other than the LICENSED AREAS.

SECTION 5. COMPLIANCE WITH APPLICABLE LAWS AND APPROVALS.

A. Facility to be Installed and Maintained in Accordance with Law & City Approvals.

COMPANY shall install, operate, maintain and remove the TELECOMMUNICATIONS FACILITIES in accordance with all applicable federal, state and local governmental laws, rules and regulations now in existence or as hereafter enacted or amended. Without limiting the foregoing, COMPANY shall obtain, maintain and fully comply with any and all permits or approvals required from CITY.

B. Telecommunications Users Tax

COMPANY acknowledges and agrees that CITY requires users of communications services such as the SERVICES to pay to CITY a Telecommunications Users Tax pursuant to Chapter 4.70 of Title 4 of the San José Municipal Code, as the same may be amended from time to time. Without limiting the other provisions of this SECTION, COMPANY agrees that COMPANY shall collect from the users of the SERVICES and remit to CITY said utility users' tax all in the manner described in, and in compliance with, Chapter 4.70 of Title 4 of the San José Municipal Code.

C. Licensing and Authorization.

COMPANY represents that it is licensed by the Federal Communications Commission to operate the TELECOMMUNICATIONS FACILITIES and provide the SERVICES, and COMPANY agrees to provide documentation evidencing such licensing and authorization within 10 days of a written request by CITY for such documentation.

SECTION 6. MAINTENANCE AND REPAIR.

- A. COMPANY shall maintain and repair the TELECOMMUNICATIONS FACILITIES, at no cost to CITY (except as specifically provided otherwise in this AGREEMENT) and to CITY's reasonable satisfaction, any and all damage to the PROPERTY or the LICENSED

AREAS that may result from any relocation or removal of the TELECOMMUNICATIONS FACILITIES or COMPANY'S exercise of any of the rights and privileges hereby granted, including, without limitation, damage to any walls, floors, ceilings, doors, electrical or communications systems in the PROPERTY or the LICENSED AREAS. Upon removal of the TELECOMMUNICATIONS FACILITIES and termination of this AGREEMENT, COMPANY shall restore the affected areas of the PROPERTY to at least as good condition and repair as before COMPANY's use thereof, except for ordinary wear and tear.

- B. COMPANY agrees to and shall: (1) keep the TELECOMMUNICATIONS FACILITIES and the LICENSED AREAS in neat, clean and orderly condition at all times; (2) not cause rubbish, garbage or debris to accumulate or remain on or around the TELECOMMUNICATIONS FACILITIES, LICENSED AREAS or PROPERTY at any time; (3) not commit, suffer or allow any acts to be done at or around the TELECOMMUNICATIONS FACILITIES, LICENSED AREAS or PROPERTY in violation of any law, regulation, permit or rule; and, (4) not use or allow the use of the TELECOMMUNICATIONS FACILITIES, LICENSED AREAS or PROPERTY for any illegal purpose.
- C. COMPANY shall mark and identify the TELECOMMUNICATIONS FACILITIES and associated equipment with ownership markings.
- D. Prior to installation, COMPANY shall submit plans and specifications for the TELECOMMUNICATIONS FACILITIES to the DIRECTOR for approval ("Plans and Specifications"), COMPANY TELECOMMUNICATIONS FACILITIES shall be installed in existing racks. Any changes to the TELECOMMUNICATIONS FACILITIES referenced in **Exhibit B** must be approved in writing by the DIRECTOR and CITY's Chief Information Officer.

SECTION 7. TERMINATION.

A. Termination with Cause.

Except as may otherwise be provided in this AGREEMENT, CITY shall have the right to terminate this AGREEMENT immediately: (i) if COMPANY fails to cure a material breach (the materiality of which shall be determined at CITY's sole discretion) of any term or condition hereof, within thirty (30) days after CITY has notified COMPANY of such breach; or (ii) if said cure cannot reasonably be completed within thirty (30) days and COMPANY has not commenced curative action within said thirty (30) days and thereafter diligently (in CITY'S sole opinion) prosecuted such cure to completion; or (iii) if COMPANY's operation is deemed by CITY to endanger or pose a threat to the public health, safety or welfare, including, without limitation, and as an example, if operation of the TELECOMMUNICATIONS FACILITIES adversely interferes with, or otherwise adversely affects CITY communications or operations; or, (iv) if CITY is mandated by law, a court

order or decision, or the federal, state or local government to take certain actions that cause or require the removal of the TELECOMMUNICATIONS FACILITIES from the LICENSED AREAS.

B. Termination without Cause.

CITY may terminate this AGREEMENT without cause upon one hundred eighty (180) days' prior written notice to COMPANY.

C. Removal of FACILITIES Upon Termination.

COMPANY shall remove the TELECOMMUNICATIONS FACILITIES and repair and restore the affected areas of the LICENSED AREAS and the PROPERTY prior to the expiration of this AGREEMENT. If this AGREEMENT is terminated by either party earlier than the expiration of the term, COMPANY shall remove the TELECOMMUNICATIONS FACILITIES and repair and restore the affected areas of the LICENSED AREAS and the PROPERTY no later than termination of the AGREEMENT, provided that termination due to required relocation of the TELECOMMUNICATIONS FACILITIES shall be governed by **Section 1.C.** Removal of the TELECOMMUNICATIONS FACILITIES shall be at COMPANY's sole cost and expense, except as specifically provided otherwise in this AGREEMENT.

SECTION 8. NO LIABILITY

A. Liability.

CITY, its agents, officers, employees or contractors, shall not be liable for any damage from any cause whatsoever to the TELECOMMUNICATIONS FACILITIES, specifically including, without limitation any damage resulting from CITY's maintenance operations adjacent to the TELECOMMUNICATIONS FACILITIES or from vandalism or unauthorized use of the TELECOMMUNICATIONS FACILITIES, except as such damage is solely caused by the gross negligence or willful misconduct of CITY, its agents, officers, employees or contractors.

B. Security.

COMPANY shall take reasonable precautions against damage to or unauthorized use of the TELECOMMUNICATIONS FACILITIES. CITY shall not be liable for any vandalism or other damage that may occur to the TELECOMMUNICATIONS FACILITIES or in the LICENSED AREAS or any unauthorized use of the TELECOMMUNICATIONS

FACILITIES except as provided in **SECTION 8(A)**, above.

SECTION 9. PLANS AND SPECIFICATIONS; PERMITS

- A. CITY shall have the right of prior review and approval of all Plans and Specifications and shall have the right to inspect the TELECOMMUNICATIONS FACILITIES at any time during and after installation. COMPANY shall not commence installation or alteration of the TELECOMMUNICATIONS FACILITIES, or any portion thereof, until CITY has approved the Plans and Specifications and COMPANY has obtained all applicable permits. Approval of Plans, Specifications and Permits shall not release COMPANY from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the Plans, Specifications and/or Permits. COMPANY shall be responsible for notifying CITY and all other relevant parties immediately upon discovery of such omissions and/or errors.
- B. COMPANY agrees to perform any work in furtherance of the Plans, Specifications and Permits at COMPANY's sole expense and in accordance with and in a manner CITY is satisfied conforms to Plans, Specifications and Permits as may be approved by CITY in furtherance of this AGREEMENT.
- C. COMPANY will submit three (3) sets of such Plans and Specifications to the CITY at the address set forth for Notices in **Section 15** herein, which CITY shall use for description and acceptance of the TELECOMMUNICATIONS FACILITIES. COMPANY shall supply the CITY any additional information it may request before approving the Plans and Specifications.
- D. COMPANY shall apply for and obtain all applicable permits as are required by CITY to perform the work described in this AGREEMENT and shall comply with all of the terms and conditions set forth in such permits, including, without limitation, allowing CITY personnel to inspect the installation of the TELECOMMUNICATIONS FACILITY on CITY property. COMPANY shall

arrange for, obtain and bear costs of all: permits (including without limitation any fees as required by any federal, state or local law, statute, ordinance, rule or regulation); plan check and inspection fees; licenses; and, relocation of any facilities on the PROPERTY, as necessary or required for health or safety in the construction or alteration of the PROPERTY. As a condition of this AGREEMENT, COMPANY agrees to perform the covenants and conditions contained in any permit issued or to be issued to COMPANY by CITY's DIRECTOR or the DIRECTOR's designees.
- E. COMPANY shall not commence physical installation of the TELECOMMUNICATIONS FACILITIES before approval of Plans and Specifications pursuant to provision **9.A** and obtaining approval of all applicable permits pursuant to provision **9.D**. Approval of Plans and Specifications by CITY Departments shall not release COMPANY from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in Plans and Specifications. COMPANY agrees to perform any work at COMPANY'S sole cost and at COMPANY'S sole expense and in accordance with and in a

manner CITY is satisfied conforms to Plans and Specifications as may be approved by CITY in furtherance of this AGREEMENT.

SECTION 10. INDEMNIFICATION

COMPANY shall protect, defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising from or related to any damage, injury or loss caused by, or resulting from, the installation, maintenance, operation or use of the TELECOMMUNICATIONS FACILITIES, the provision of SERVICES, or resulting in any way from COMPANY's occupation or use of the PROPERTY or the LICENSED AREAS, including, without limitation, that which is due, in whole or in part, to the willful misconduct or negligent acts (active or passive) or omissions by COMPANY, its officers, employees, consultants or agents. COMPANY's obligation to indemnify and hold harmless excludes only such claim, loss or liability that is due to the sole negligence or willful misconduct of CITY and/or its employees. All of COMPANY's obligations under this SECTION are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this AGREEMENT.

In an action or claim against CITY in which COMPANY is defending CITY, CITY shall have the right to approve legal counsel providing CITY's defense.

SECTION 11. TAXES

- A. COMPANY shall pay before delinquency any and all taxes, assessments, licenses, fees and other public charges which may be levied, assessed or imposed upon any of COMPANY's interests herein, upon COMPANY's businesses, upon COMPANY for the privilege of conducting business, or upon any property of COMPANY at the PROPERTY. COMPANY is advised that this AGREEMENT may, but is not intended to, create a possessory interest in the LICENSED AREAS, for which COMPANY may be subject to payment of possessory interest taxes therefor, for which CITY shall not be liable. Payment of any possessory interest tax shall not reduce in any way any charges or other fees required to be paid by COMPANY hereunder.
- B. COMPANY shall not permit or suffer any liens to be imposed upon the PROPERTY or any portion thereof, without promptly discharging the same, provided, however, that COMPANY may, if it so desires, contest the legality of same following prior written notice to CITY. In the event of a contest of a lien, COMPANY shall provide a bond in an amount and in a form acceptable to CITY immediately following request therefor by CITY.

SECTION 12. INSURANCE

COMPANY agrees to have and maintain the policies set forth in **EXHIBIT C**, entitled "INSURANCE", which is attached hereto and incorporated herein. All policies, endorsements, certificates, and/or binders shall be subject to approval by the Director of Human Resources or the Director's authorized designee ("Risk Manager") as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. COMPANY agrees to provide the CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 13. FREQUENCY INTERFERENCE

- A. COMPANY will not cause, permit or allow the installation, operation, maintenance or use of the TELECOMMUNICATIONS FACILITIES or any other equipment installed pursuant to this AGREEMENT to interfere with: (1) any CITY use of the PROPERTY; (2) CITY equipment used at the PROPERTY; (3) CITY communications; and/or (4) or any pre-existing third party uses of the PROPERTY or any other CITY property, including uses of communications equipment, which uses were authorized or planned by CITY prior to the execution of this AGREEMENT. COMPANY shall immediately provide, in writing, to the CITY at the address set forth for notices in **Section 15**, herein, the frequencies utilized in the operation of the TELECOMMUNICATIONS FACILITIES. COMPANY shall also provide the CITY, at the same address, with written notice of any intended changes in those frequencies, a description of those frequencies and the dates that those frequency changes are anticipated to occur, at least thirty (30) days prior to the date that those frequency changes are anticipated to occur. COMPANY shall not begin any work on the PROPERTY pursuant to this AGREEMENT until these frequencies have been approved in writing by CITY's Chief Information Officer or any other person that may be designated to make such approval by CITY's City Manager.
- B. COMPANY shall ensure that its use of the TELECOMMUNICATIONS FACILITIES does not interfere with any communication transmissions in the vicinity of the PROPERTY, including without limitation, the CITY's public safety transmissions, police and fire communications, CITY's internal or external communications, or communications used by CITY. COMPANY shall operate the TELECOMMUNICATIONS FACILITIES in such a manner that all communications sent or received by the TELECOMMUNICATIONS FACILITIES shall be separated from all CITY communications frequencies, including without limitation, CITY communications listed in the preceding sentence, by at least 1 megahertz.

- C. If COMPANY's installation, maintenance, operation, use or removal of the TELECOMMUNICATIONS FACILITIES violates this provision, COMPANY shall immediately eliminate such violation or interference. If COMPANY fails to immediately eliminate such violation or interference, CITY may, in addition to and without compromising any other remedy available to CITY, immediately cut off power to the facility in the manner set forth in **SECTION 14** below. CITY shall immediately provide notice to COMPANY of any interference or the exercise of CITY's shut off rights pursuant to this SECTION.
- D. COMPANY shall use its best efforts to operate TELECOMMUNICATIONS FACILITIES in a manner that is consistent with all applicable frequencies assigned to it by the Federal Communications Commission ("FCC"), if any, and in compliance with all applicable FCC rules and regulations.

SECTION 14. EMERGENCY

- A. COMPANY understands that emergency situations may develop at times which require power to the TELECOMMUNICATIONS FACILITIES to be shut off. Notwithstanding **Section 13**, COMPANY agrees that in the event that such a situation occurs, and there are frequency interferences of any nature between CITY's communication equipment and that of COMPANY, CITY shall have the right to shut off immediately any power to the TELECOMMUNICATIONS FACILITIES and any equipment of COMPANY's located on the PROPERTY for the duration of the emergency. COMPANY agrees not to hold CITY responsible or liable for and shall protect, defend, indemnify and hold CITY harmless pursuant to **SECTION 10** for any damage, loss, claim or liability of any nature suffered as a result of the loss of the use of the TELECOMMUNICATIONS FACILITIES or other communication facilities at PROPERTY or affected by the power outage at PROPERTY.
- B. COMPANY agrees to install and/or identify a master power "cut-off" switch on their equipment for the purpose of assisting CITY in such an emergency.
- C. Unless otherwise specifically provided in a notice of termination of this AGREEMENT, CITY's exercise of the right to shut off any power to the TELECOMMUNICATIONS FACILITIES pursuant to this SECTION is not intended to constitute a termination of this AGREEMENT by either party. COMPANY and CITY shall meet after the CITY determines that an emergency situation has ended to establish the time and manner in which power shall be restored to the TELECOMMUNICATIONS FACILITIES.
- D. CITY shall have the right to determine what constitutes an "emergency situation" pursuant to this Section.

SECTION 15. NOTICES

All notices and other communications required or permitted under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To The CITY

CITY OF SAN JOSE

Public Works Department, CFAS

Attn: Jim Wilson

200 East Santa Clara St., 6th Floor

San Jose, California 95113-1905

To COMPANY

COMPANY NAME

Attn: NAME

Street Address

City, State Zip Code

All notices of a legal nature including any claims against the CITY, its officers, or employees shall also be served in the manner specified above to the following address:

The City of San Jose

Richard Doyle, City Attorney

200 E. Santa Clara St., 16th Floor

San Jose, CA 95113-1905

A notice shall be deemed effective on the date of personal delivery by hand or the date of receipt of facsimile transmission (with verification of receipt) or, if mailed, three (3) days after deposit in the mail.

SECTION 16. RIGHT TO USE SUBORDINATE

The right to use the LICENSED AREAS herein granted by CITY to COMPANY, and all rights and privileges hereunder, are and shall be subordinate to the rights of CITY to use and occupy, and to any occupancy by them of, the PROPERTY and the LICENSED AREAS. In the event of conflict between COMPANY's right to use the LICENSED AREAS and CITY's desired use thereof, after the EFFECTIVE DATE, CITY may require COMPANY to redesign, adjust, relocate or remove the TELECOMMUNICATIONS FACILITIES as further set forth in **SECTION**

1. of this AGREEMENT. COMPANY'S right to install, maintain and operate the TELECOMMUNICATIONS FACILITIES, or to remove the TELECOMMUNICATIONS FACILITIES, shall be subject at all times to such rights as CITY may have to require the removal or relocation of the TELECOMMUNICATIONS FACILITIES at the sole cost and expense of COMPANY, under the terms stated in **SECTION 1** of this AGREEMENT.

SECTION 17. ASSIGNMENT

COMPANY shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of COMPANY's interest in this AGREEMENT or in the LICENSED AREA, without CITY's prior written consent which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, COMPANY shall have the right to sublease or assign its rights under this AGREEMENT to any of its subsidiaries, affiliates or successor legal entities or to any entity acquiring substantially all of the assets of the COMPANY.

SECTION 18. GOVERNING LAW.

This AGREEMENT shall be construed by and in accordance with the laws of the State of California.

SECTION 19. NO INTEREST IN PROPERTY.

Nothing herein shall be deemed to create a lease, or easement of any property, or to grant any interest in the PROPERTY, other than a real property license to use the LICENSED AREAS, revocable as set forth herein.

SECTION 20. INSPECTION

The LICENSED AREAS, including keys thereto, shall be at all times under control of the CITY, whose officials, employees and agents shall have the right to enter the LICENSED AREAS, and all portions thereof, for purposes of inspection (and other purposes contemplated by this AGREEMENT) at all times during the period covered by this AGREEMENT.

SECTION 21. UTILITIES

COMPANY shall use existing electrical power at no cost to COMPANY. If such power is not readily useable (i.e., additional wiring and appurtenances are required to bring electrical power to the TELECOMMUNICATIONS FACILITIES) COMPANY shall install wiring and appurtenances at COMPANY'S sole expense. COMPANY shall obtain written approval from

the DIRECTOR prior to completing any of the above-mentioned work. All such work shall be at no cost to CITY. CITY is not obligated to make electricity or other utilities available if there is an interruption in such service to the LICENSED AREAS or to the PROPERTY. COMPANY shall not do, nor shall it permit anything to be done, which may interfere with the effectiveness or accessibility of the utility, heating, ventilation, diesel exhaust or air conditioning systems or portions thereof of the PROPERTY.

SECTION 22. NOT AGENT OF CITY

Neither anything in this AGREEMENT nor any acts of COMPANY shall authorize COMPANY or any of its employees, agents or contractors to act as agent, contractor, joint venturer or employee of CITY for any purpose.

SECTION 23. RESERVATION OF RIGHTS.

COMPANY understands, acknowledges and agrees that any and all authorizations granted to COMPANY under this AGREEMENT are nonexclusive and shall remain subject to all prior and continuing regulatory and proprietary rights and powers of CITY to regulate, govern and use CITY property, as well as any existing encumbrances, deeds, covenants, restrictions, easements, dedications and other claims of title that may affect CITY property. CITY and COMPANY agree that nothing contained in, or contemplated by, this AGREEMENT is intended to confer, convey, create or grant to COMPANY any perpetual interest in any CITY property or in any of CITY's public rights of way.

SECTION 24. CONFLICT OF INTEREST.

COMPANY shall avoid all conflict of interest or the appearance of conflict of interest in the performance of this AGREEMENT.

SECTION 25. GIFTS.

- A. COMPANY is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B. COMPANY agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by COMPANY. In addition to any other remedies CITY

may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in **SECTION 7** of this AGREEMENT.

SECTION 26. DISQUALIFICATION OF FORMER EMPLOYEES.

COMPANY is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters, which are connected with former duties, or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance"). COMPANY shall not utilize either directly or indirectly any officer, employee, or agent of COMPANY to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 28. MISCELLANEOUS

- A. Whenever the singular number is used in this AGREEMENT and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.
- B. If there be more than one entity designated in, or signatory to, this AGREEMENT, the obligations hereunder imposed upon COMPANY shall be joint and several; and the term COMPANY as used herein shall refer to each and every of said signatory parties, severally as well as jointly.
- C. This instrument contains all of the agreements and conditions entered into and made by and between the parties and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in interest.
- D. Time is, and shall be, of the essence for each term and provision of this AGREEMENT.
- E. Each and every term, condition, covenant and provision of this AGREEMENT is and shall be deemed to be a material part of the consideration for CITY's entry into this AGREEMENT and any breach hereof by COMPANY shall be deemed to be a material breach. Each term and provision of this AGREEMENT performable by COMPANY shall be construed to be both a covenant and a condition.
- F. The headings of the several paragraphs and sections of this AGREEMENT are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this AGREEMENT and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

G. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either CITY or COMPANY in its respective rights and obligations contained in the valid covenants, conditions and provisions of this AGREEMENT.

H. All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this AGREEMENT as if set forth fully herein.

I. Whenever in this AGREEMENT the approval or consent of a party is required, such approval or consent must be in advance, shall be in writing, and shall be executed by a person having the express authority to grant such approval or consent unless the terms of this AGREEMENT specifically allow an oral approval or consent of a party.

J. This AGREEMENT may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

K. This AGREEMENT shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either party.

L. Days, unless otherwise specified, shall mean calendar days.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

By: _____
Glenn Schwarzbach
Senior Deputy City Attorney

By _____
Lee Price, MMC
City Clerk
200 E. Santa Clara St., Wing 2nd Floor
San Jose, CA 95113-1905

“COMPANY”

Company
a XYZ Corporation

By _____
Name
Title
Street Address
City, State, Zip
Telephone: ()

EXHIBIT A

PROPERTY DESCRIPTION

Property is that area described as "SAN JOSE CITY HALL", located at 200 E. Santa Clara Street, San Jose, CA 95113, and as indicated on the Vicinity Map and Location Map, on the cover sheet of the plans entitled, 'CITY HALL WIRELESS REINFORCEMENT UPGRADE PROJECT, approved by the Director of Public Works on October XX, 2009.

EXHIBIT B

TELECOMMUNICATIONS FACILITIES

[COMPANY] will install base transceiver stations (TRANSCIVER STATION SPECIFICATIONS TO BE ATTACHED TO THIS EXHIBIT B, "TELECOMMUNICATIONS FACILITIES", AND INCORPORATED TO THIS AGREEMENT HEREIN), which will tie into the pre-existing telecommunications infrastructure backbone located in the basement of CITY HALL, as shown on the approved set of plans and specifications, titled, "CITY HALL WIRELESS UPGRADE PROJECT".

EXHIBIT C

LICENSED AREAS

Licensed Areas shall be as shown on plans entitled, 'CITY HALL WIRELESS REINFORCEMENT UPGRADE PROJECT, approved by the Director of Public Works on October, XX, 2009.

5.3.1 EXHIBIT D

INSURANCE

INSURANCE REQUIREMENTS. COMPANY shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the work hereunder by the COMPANY, thier Contractor, agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the COMPANY.

D-1 Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage “occurrence” form CG 0001; and
2. The coverage provided by Insurance Services Office form number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers’ Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.
4. Professional Liability Errors and Omissions insurance for all professional services.
5. Property Insurance

There shall be no endorsement reducing the scope of coverage required above unless approved by the City’s Risk Management.

D-2 Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate

limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
4. Professional Liability Errors and Omission: \$1,000,000 per occurrence/aggregate.
5. Property insurance against all risks of loss including but not limited to fire, vandalism and malicious mischief, and other perils at the COMPANY's desecration, in an amount equal to 100% of the replacement cost of all fixtures, stock and equipment, including fixtures, improvements and betterments installed by COMPANY on premises owned by CITY.

D-3 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the COMPANY shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City.

D-4 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

a. The City, its officials, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the COMPANY; products and completed operations of the COMPANY; premises owned, leased or used by the COMPANY; or automobiles owned, leased, hired or borrowed by the COMPANY. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors.

b. The COMPANY's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents or contractors shall be excess of the COMPANY's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents, or contractors.

d. Coverage shall state that the COMAPNY's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents and contractors.

2. Workers' Compensation and Employers' Liability

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, agents and contractors

3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

D-5 Acceptability of Insurance

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

D-6 Verification of Coverage

COMPANY shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose – Human Resources
Risk Management
200 East Santa Clara St., 2nd Floor Wing
San Jose, CA 95113-1905

D-7 Subcontractors

COMPANY shall include all contractors and subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.